

STATE OF MICHIGAN
COURT OF APPEALS

ERIC B. DINKINS,

Plaintiff-Appellant,

v

JULIE PALMER, SANDRA BURK, JOHN
DAVIDS, KURT JONES, and KENNETH
MCGEE,¹

Defendants-Appellees.

UNPUBLISHED

September 17, 2002

No. 232987

Montcalm Circuit Court

LC No. 01-000046-NO

Before: Murphy, P.J., and Hood and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order of dismissal. Plaintiff filed a multi-count complaint following his termination from employment as a teacher's aide at the Carson City Correctional Facility. The trial court sua sponte dismissed the complaint following a review in accordance with the provisions of MCL 600.5501 *et seq.* We affirm.

Plaintiff first alleges that the trial court erred in applying the provisions of MCL 600.5501 *et seq.*, because his complaint was based on intentional state tort violations. We disagree. Our review of this issue is de novo. *Meagher v Wayne State University*, 222 Mich App 700, 719; 565 NW2d 401 (1997). The gravamen of a plaintiff's action is determined by considering the entire claim, and a plaintiff may not avoid dismissal or immunity protections by artful pleading. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999). Review of plaintiff's complaint reveals that it is premised on prison conditions as defined by MCL 600.5531(a). Accordingly, the trial court properly analyzed the claim in accordance with MCL 600.5501 *et seq.*

Plaintiff next alleges that the trial court erred by sua sponte entering a dismissal. We

¹ In his reply brief, plaintiff asserts that the appropriate spelling is "McKee." Because there is no information in the lower court record indicating the correct spelling, the caption has been prepared in accordance with the appellate docketing statement.

disagree. A showing of physical injury was required for plaintiff to maintain his claims for damages. MCL 600.5511(1).²

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Christopher M. Murray

² Accordingly, we need not address plaintiff's remaining challenges to the order of dismissal based on governmental immunity and failure to exhaust administrative remedies. Furthermore, although not raised before and addressed by the trial court, the representation of the defendants by the attorney general was proper. MCL 691.1408(1).